



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** HB 93 authorizes the creation of the Wrecker Operator Advisory Council within DACS to assist the agency with the technical aspects of regulating the towing industry. The Council also is charged with approving curricula for certification and continuing education programs, and determining if out-of-state wrecker certification courses are substantially equivalent to Florida courses. Also, DACS is given 9 FTEs and additional rulemaking authority to implement the bill's provisions.

**Ensure lower taxes:** HB 93 creates a \$495 annual registration fee for most wrecker companies in the state of Florida.

**Safeguard individual liberty:** To continue operating a wrecker business, the bill requires that most wrecker companies register and that most wrecker operators undergo training and continuing education to be certified and thus continue in employment. Additionally, owners and executive managers of most wrecker companies must be fingerprinted and undergo criminal background checks.

**Promote personal responsibility:** This bill creates criminal offenses for wrongful conduct.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Currently, the primary business regulations on the wrecker industry are proper registration of vehicles, as described in chapter 320, F.S., and liability insurance coverage in s. 324.021 and s. 627.7415, F.S. In addition, many local governments require wrecker companies to obtain business tax receipts for operation of a business, pursuant to chapter 205, F.S.

Over the years, concerns have increased over so-called "gypsy wreckers" operating without liability insurance, whose vehicles are improperly registered and ill-equipped to tow vehicles, and who prey on stranded motorists, tourists, and motorists who illegally park their vehicles.

##### **Effect of Proposed Changes**

HB 93 creates chapter 508, F.S. – Wrecker Services, which is section 1 of the bill. It creates a comprehensive structure for the registration of wrecker companies and the certification and continuing education for the persons who drive the tow trucks (wrecker operators), and establishes penalties. These regulatory responsibilities are assigned to DACS, assisted by a new seven-member Wrecker Operator Advisory Council.

The bill provides, with some exceptions, that all wrecker companies must be registered in Florida. Annual registration is a prerequisite for obtaining a local business tax receipt and for participating in the wrecker allocation call programs.

Exempt from these requirements are persons regularly engaged in the business of transporting mobile homes; motor vehicle repair shops deriving 80 percent of their business from repairs; franchised motor vehicle dealers; recovery or repossession agents; and any person performing wrecker services on behalf of a religious organization that holds a current exemption from federal taxation, or that is not required to apply for recognition of its exemption under the Internal Revenue Code.

##### Role of the Wrecker Operator Advisory Council

The bill creates a Wrecker Operator Advisory Council (Council) within DACS. The Council consists of 7 members who must be Florida residents: 6 appointed by the Commissioner of Agriculture and the

seventh being the Executive Director of the Professional Wrecker Operators of Florida as an ex-officio but voting member. Three of the Commissioner's appointees must have been ultimate equitable owners of a wrecker company for at least 5 years; one must be a wrecker operator with at least five years of experience; and two are lay persons. Of the initial appointees, two wrecker company owners and one lay person would serve 2-year terms and the rest 4-year terms; all subsequent appointees would serve 4-year terms. Members may be reappointed for additional terms, but may not exceed 8 years of consecutive service. By the year 2013, the industry appointees also must meet the registration or certification requirements. The Council selects its chair and vice chair, and all members serve without compensation except for travel reimbursement and per diem pursuant to s. 112.061, F.S.

The bill provides the Council with significant authority. The Council will:

- Approve the certification courses for wrecker operators, prescribe the curricula, and approve each organization proposing to offer the courses.
- Approve the instruction, training, and examination for specialized wrecker services before they can be endorsed for a wrecker certification.
- Approve certification training in other states for the purposes of substitution, and determine whether such training is substantially equivalent to Florida's approved wrecker-operator courses.
- Review the rules promulgated by DACS to implement chapter 508, F.S., and advise the agency on wrecker industry standards, practices and other matters requiring technical expertise.

#### DACS's role

DACS has the responsibility to manage and enforce the wrecker company registration and wrecker operator certification programs. The agency has both general and specific rulemaking authority to implement the provisions of chapter 508, F.S. DACS will maintain records, issue the certification cards and registration approvals or denials, select the certification training organizations, notify DHSMV based on the Council's approval, and inspect the records of wrecker companies. It is required to keep and store all records of the Council and to provide administrative support and staff.

#### Registration Process and Requirements

The bill provides for an annual registration fee of \$495 per company. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted and must bear the cost of fingerprinting. General employees are not required to be fingerprinted. Applicants must pay the Florida Department of Law Enforcement a state fingerprint processing fee, and an additional fee for federal processing will be charged. DACS will issue a certificate with a number to the registrant. The certificate must be displayed in a conspicuous place in the company's place of business, and any company advertisement must bear the registration number. For the purposes of the bill, the term "advertisement" means a printed or graphic statement made in a newspaper or other publication or contained in any notice, handbill, or sign, including signage on a vehicle, flyer, catalog, or letter.

In addition, registered wrecker companies are required to certify to DACS that they carry the additional commercial motor vehicle liability insurance as currently required under s. 627.7415, F.S.

Annual renewals are subject to a \$25 late fee. Unless local licensing requirements are met and maintained, and the company can present proof of the additional commercial vehicle liability insurance, a wrecker company may not renew its registration.

DACS may deny or refuse registration renewal if:

- the wrecker company does not meet or adhere to registration requirements;
- the owners or executive managers have been convicted of a felony within the last 10 years;
- the owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, motor vehicle theft, car jacking, chop shops, parts and

accessories records, airbags, overcharging for repairs or parts, or towing or storage requirements;

- the company fails to pay fines or penalties imposed under the new law;
- the company has an action pending in any jurisdiction for violation of the new law; or
- the company has a judgment against it for violation of the new law.

A wrecker company is required to maintain records of its wrecker services for at least 12 months at the principal place of business. It also must maintain records on each of its wrecker operators sufficient to demonstrate that the operator has successfully completed an approved wrecker operator continuing education course and is certified to perform wrecker services. These records must be maintained at the principal place of business for as long as the operator is employed by the wrecker company and for at least six months after. Organizations approved to conduct wrecker operator certification courses or continuing education courses are also required to maintain records for at least five years on persons who complete the courses. DACS is authorized to enter the place of business for the purpose of examining the records.

#### Training and Certification Process

In addition to wrecker company registration, the bill requires certification of wrecker operators. DACS must establish a certification program including certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. DACS also must require the courses to issue appropriate certificates and cards acknowledging completion of certification requirements. DACS is authorized to adopt rules providing for issuance of certification to operators from different states who have met substantially similar certification requirements. Certification programs created by DACS, and those of other jurisdictions taken in lieu of Florida certification programs, must be approved by the Wrecker Operator Advisory Council.

#### Prohibited acts and penalties

Wrecker companies, wrecker operators, or other employees or agents of the company are prohibited from:

- Charging rates in excess of those set by local ordinance;
- Violating the laws governing the FHP wrecker allocation system;
- Violating the laws governing the local wrecker allocation system;
- Violating the laws governing liens for towing or storing vehicles and vessels;
- Violating the laws governing towing, removing, or storing vehicles and vessels;
- Refusing to allow a law enforcement officer to inspect a towing and storage facility;
- Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
- Allowing an operator to provide specialized services without the proper endorsement; or
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

HB 93 also creates a number of administrative and criminal penalties related to chapter 508, F.S., requirements. The criminal penalties are more fully described below. Among the administrative penalties, DACS may:

- Issue a notice of noncompliance;
- Impose an administrative fine of no more than \$5,000;
- Issue cease and desist orders;
- Revoke, suspend or refuse registration;
- Impose a DACS' specified probationary period;
- Seek a civil remedy of up to \$5,000 per violation; or
- Seek restitution on behalf of an aggrieved party.

DACS must notify DHSMV when a registration issued under the provisions of the bill has been suspended or revoked by order of DACS. That notification must be sent within 10 days after issuance of the order.

Under the bill, operation of an unregistered wrecker company and performance of wrecker services without being employed by a registered wrecker company are third-degree felonies.

All fees, penalties, and other monies collected pursuant to this new law are deposited into DACS' General Inspection Trust Fund and may only be used to implement the new law.

## **Wrecker Allocation System**

### **Present Situation**

The Florida Highway Patrol (FHP) is authorized in s. 321.051, F.S., to operate a wrecker operator system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from crash scenes, and for the removal and storage of abandoned vehicles. All wrecker operators are eligible for use in the system provided their equipment meets recognized safety qualifications and mechanical standards set by the FHP for the size of vehicle the equipment is designed to handle.

FHP can set maximum rates for towing and storage of vehicles removed at its request, if the rates have not already been set by a county or municipality. A wrecker operator may pursue an appeal by writ of certiorari from the circuit court if its participation in the system is denied, suspended, or revoked.

Wrecker operators are prohibited from monitoring police radios for communications between patrol field units and the dispatcher to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene to initiate contact with the owner of the wrecked or disabled vehicle. This illegal monitoring is punishable by a civil fine of up to \$500. If the operator initiates contact before arrival of the dispatched operator, solicits towing, and tows the vehicle, or if the disabled vehicle owner or operator initiates contact, but the wrecker operator fails to disclose that he or she was not dispatched and fails to disclose all rates in writing for towing and storage, the drive-by wrecker operator commits a second-degree misdemeanor. A wrecker operator who falsely identifies him or herself as part of the system commits a first-degree misdemeanor. The law does not prohibit any person from calling a wrecker operator directly for services, even if that operator is not authorized to participate in the system.

Local governments are also authorized to operate a similar wrecker operator dispatch system, pursuant to s. 323.002, F.S.

In addition, current law provides regulations governing the operation of storage facilities containing towed vehicles held at the request of investigating law enforcement agencies, and provides for liens against towed and stored vehicles when the owners fail to pay towing and storage costs.

### **Effect of Proposed Changes**

The existing ss. 321.051 and 323.002, F.S., are rewritten in HB 93, but the primary changes are made to reflect the wrecker registration and certification requirements imposed in the new chapter 508, F.S.

The bill defines and differentiates between wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks. It also renames the "wrecker operator system" as the "wrecker allocation system."

The key change is that only registered wrecker companies and certified operators are able to participate in the wrecker allocation system. The law still allows the owner or operator of a disabled vehicle to hire an unauthorized wrecker; however, the law enforcement officer on the scene may, in the interest of public safety, dispatch an authorized wrecker operator if the officer believes it will arrive before the wrecker company requested by the motorist.

## Liens assessed on towed and stored vehicles

### **Present Situation**

Section 713.78, F.S., currently provides that when a wrecker or tow service properly tows a vehicle they have a lien against the vehicle for payment of reasonable towing and storage fees. The owner of the vehicle may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle the service must send notice to the registered owner and all lien holders by certified mail within 7 business days after the date of storage of the vehicle. The section further provides that a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care.

The law also limits the liability of a wrecker operator when towing or storing a vehicle. The section provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker uses reasonable care. The wrecker operator is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic. The section provides a wrecker has used reasonable care if:

- the wrecker operator surrounds the storage facility with a chain-link or solid fence at least 6 feet in height;
- the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; and
- the wrecker operator employs a night watchman, security dog, or security cameras.

In addition, current law requires any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway to conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property not identified on the inventory record prepared by the law enforcement agency.

Section 713.78 (13), F.S., provides that upon receipt by DHSMV of written notice from a wrecker operator claiming a lien for recovery, towing, or storage of an abandoned vehicle, vessel, or mobile home upon instructions from any law enforcement agency, for which a certificate of destruction has been issued, DHSMV must place the name of the registered owner of that vehicle, vessel, or mobile home on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle. If the vehicle, vessel, or mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list.

The section further provides the amount of the wrecker operator's lien for which the DHSMV will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality.

The registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien by notifying DHSMV of the dispute in writing, if at least one of the following applies:

- The registered owner presents a notarized bill of sale proving the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
- The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

## **Effect of Proposed Changes**

HB 93 amends s. 713.78, F.S., to provide that a registered owner may dispute a wrecker operator's lien if DHSMV's records were marked sold prior to the issuance of a certificate of destruction.

The section is further amended to provide that the lien dispute resolution process in current law does not apply to a leased vehicle registered in the name of the lessor. Additionally, the revisions provide that reasonable attorney fees may be awarded to the prevailing party in complaints concerning the wrongful taking of property. Further, the bill provides that employees or authorized agents of a wrecker company are not liable for civil damages when removing a vehicle or vehicle cargo that is an imminent public safety hazard from a public road if requested by a law enforcement officer, deputy sheriff, or firefighter.

## **Other issues in HB 93**

- Wrecker companies must accept at least two of the following three forms of payment: cash, cashier's check, money order, traveler's check; a valid personal check showing the name and address of the vehicle or vessel owner or operator; or a valid credit card.
- The bill requires that a wrecker license plate must be placed on the front of a wrecker.
- A wrecker may not be registered and licensed as such with DHSMV unless the owner of the vehicle is a wrecker company registered with DACS pursuant to the new chapter 508, F.S. This provision does not apply to wreckers that are registered under the International Registration Plan.
- Local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than this new law, and may still levy business taxes. DACS may enter into a cooperative agreement with any county or municipality that provides for the referral, investigation, and prosecution of consumer complaints alleging violations of the provisions of this bill. DACS may also delegate enforcement to any county or municipality entering into a cooperative agreement.
- The bill provides immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, law enforcement officers and other emergency response personnel from property damages or claims of damage for removal of vehicles or vehicle cargo from blocking the roadway when there is an imminent public safety hazard.

The bill harmonizes the various definitions of "wrecker" and "wrecker operator" throughout Florida Statutes.

## **Infractions and Criminal Offenses Created By This Bill**

This bill creates the following offenses:

### **Infraction<sup>1</sup>**

Listening to a police radio with the intent to dispatch a wrecker outside of a wrecker allocation system (a rotation list). See new ss. 321.051(3)(a) and 323.002(2)(b), F.S.

### **Second Degree Misdemeanor<sup>2</sup>**

If not dispatched pursuant to the rotation list, driving by a wrecked or disabled vehicle and initiating contact with the owner with the intent to solicit towing business. See new ss. 321.051(3)(b) and 323.002(2)(d), F.S.

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<sup>1</sup> An infraction is punishable by a fine of no more than \$500. See s. 775.083, F.S.

<sup>2</sup> A second degree misdemeanor is punishable by confinement in the county jail for up to 60 days and/or a fine of up to \$500. See ss. 775.082 and 775.083, F.S.

If not dispatched pursuant to the rotation list, failing to disclose to the owner of the vehicle that the operator was not dispatched according to the list, or failing to disclose the price in writing prior to providing the towing service. See new ss. 321.051(3)(c) and 323.002(2)(d), F.S.

First Degree Misdemeanor<sup>3</sup>

If not dispatched pursuant to the rotation list, falsely claiming to have been dispatched pursuant to the list. See new ss. 321.051(3)(d) and 323.002(2)(e), F.S.

Third Degree Felony (unranked in Criminal Punishment Code)<sup>4</sup>

Operating a wrecker company without having registered with DACS. See new s. 508.15(1), F.S.

Performing wrecker services without being an employee or owner of a registered wrecker company. See new s. 508.115(2), F.S.

Towing a vehicle or vessel to a storage facility more than 10 miles from point of towing (15 miles in a county of less than 500,000, and increased to 20 and 30 miles respectively if no wrecker company is located within the smaller radius). See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to be continuously open between 8:00 a.m. and 6:00 p.m. on a regular business day. See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request. See new s. 715.07(6)(b), F.S.

Failure to release a vehicle or vessel about to be towed when the owner shows up, offers to pay half the standard towing fee, and agrees to immediately move the vehicle or vessel. See new s. 715.07(6)(b), F.S.

A wrecker company or operator offering a property owner a rebate or other consideration for the privilege of towing from the property; or a property owner soliciting a rebate or other consideration from a wrecker operator or operator for the privilege of towing from the property. See new s. 715.07(6)(b), F.S.

Refusal of a wrecker operator to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return. A wrecker operator conditioning return of a vehicle or vessel on the owner of a vehicle or vessel signing a liability waiver. Failure of a wrecker operator to give the owner of a vehicle or vessel a signed receipt showing the name of the company. See new s. 715.07(6)(b), F.S.

**Florida's Sunrise Act**

Section 11.62, F.S., provides guiding principles for the establishment of new regulatory programs for professions and occupations. Subsection (3) provides that in determining whether to regulate a profession or occupation, the Legislature shall consider certain factors, including: whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare; whether the practice of the profession or occupation requires specialized skill or training; whether the regulation will have an unreasonable effect on job creation or job retention in the state; and whether the overall cost effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

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<sup>3</sup> A first degree misdemeanor is punishable by confinement in the county jail for up to 1 year and/or a fine of up to \$1000. See ss. 775.082 and 775.083, F.S.

<sup>4</sup> A third degree felony is punishable by confinement in state prison for up to 5 years and/or a fine of up to \$5,000. An unranked third degree felony is a Level 1 offense in the Criminal Punishment Code. The Criminal Punishment Code sets minimum sentences for felony offenses based on a point system. Unless the offender has a prior criminal record, committing one Level 1 offense of the type created by this bill will yield a minimum of "any nonstate prison sanction", meaning that there is no minimum term of incarceration. See ss. 775.082 and 775.083, F.S.

Subsection (4) of s. 11.62, F.S., provides that the proponents of legislation that provides for the regulation of a profession or occupation not already subject to state regulation shall provide, *upon request*, certain information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred. Similarly, subsection (5) provides that the agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation, including the resources necessary to implement and enforce the proposed regulation.

C. SECTION DIRECTORY:

Section 1: Creates ch. 508, F.S., related to Wrecker Services. Creates ss. 508.101, 508.102, 508.103, 508.105, 508.106, 508.1061, 508.107, 508.108, 508.109, 508.111, 508.112, 508.113, 508.114, 508.116, 508.117, 508.118, 508.119, and 508.120, F.S.; provides for definitions; creates a wrecker operator advisory council assigned to the state Department of Agriculture and Consumer Services (DACS); provides DACS with rule-making authority; specifies registration requirements, renewal of registrations, denial of registrations, forms of payment wrecker companies must accept, operator certifications, certification cards, process, and continuing education; provides for DACS's inspection of employment records; specifies prohibited acts, administrative penalties, criminal penalties, fees, disposition of payments, recovery agent exemptions, preservation of ordinances, and records maintenance requirements of wrecker companies.

Section 2: Creates s. 508.104, F.S., requiring registration for wrecker companies.

Section 3: Creates s. 508.110, F.S., requiring wrecker operator certification.

Section 4: Creates s. 508.115, F.S., establishing criminal penalties.

Section 5: Effective January 1, 2008, amends s. 120.80, F.S., to reflect changes in definitions created elsewhere in the bill.

Section 6: Creates s. 205.1977, F.S., prohibiting counties and municipalities from issuing local business tax receipts to unregistered wrecker companies.

Section 7: Amends s. 316.530, F.S., to delete the term "tow truck."

Section 8: Amends s. 320.01, F.S., to amend the definition of "wrecker."

Section 9: Effective January 1, 2008, amends s. 320.03, F.S., to replace "wrecker operator" with "wrecker company."

Section 10: Amends s. 320.0706, F.S., requiring license plates to be displayed on the front end of wreckers.

Section 11: Amends s. 320.0821, F.S., providing that a wrecker, regardless of its weight, shall display only one license plate and that it must be displayed on the front of the wrecker.

Section 12: Effective January 1, 2008, amends s. 320.0821, F.S., prohibiting DHSMV from renewing a license plate for a wrecker unless the company owning the wrecker is registered with the state, pursuant to chapter 508, F.S.

Section 13: Amends s. 320.13, F.S., to delete the term "tow truck" and add a cross-reference.

Section 14: Reenacts s. 316.550, F.S., to incorporate the amendments made to s. 320.01, F.S.

Section 15: Reenacts s. 320.08, F.S., to incorporate amendments made to s. 320.01, F.S.

Section 16: Effective January 1, 2008, amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and add definitions. Requires that only wrecker companies registered under chapter 508, F.S., may be part of the allocation system; specifies under what circumstances law enforcement officers may dispatch wrecker companies out of rotation or override the selection of a wrecker company by the owner/operator of the disabled vehicle needing a tow.

Section 17: Effective January 1, 2008, amends s. 323.001, F.S., to reflect terminology and registration changes implemented elsewhere in the bill.

Section 18: Effective January 1, 2008, amends s. 323.002, F.S., to rename the county and municipal wrecker operator system as "the county and municipal wrecker allocation system" and to reflect terminology and registration changes implemented elsewhere in the bill; specifies that only wrecker companies registered pursuant to chapter 508, F.S., may be included in the allocation system.

Section 19: Effective January 1, 2008, amends s. 713.78, F.S., to reflect the changes in terminology and definitions created pursuant to the new chapter 508, F.S.; requires an award of damages, costs, and reasonable attorney's fees for the prevailing party in a lien case; authorizes law enforcement officers, firefighters, emergency medical services providers, and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability, and without the consent of the owner or operator, if the vehicle or cargo poses an imminent public safety hazard; provides for dispute of a wrecker operator's lien if DHSMV records indicate that the vehicle or vessel was sold before issuance of a certificate of destruction.

Section 20: Provides that amendments to s. 713.78, F.S., made by this act do not affect the validity of liens established under s. 713.78, F.S., before January 1, 2008.

Section 21: Effective January 1, 2008, amends s. 715.07, F.S., related to towing vehicles from real property. Clarifies that this section will address towing vehicles and vessels parked on real property without permission; updates to include new wrecker-related terminology and registration requirements; prohibits property owners from soliciting rebates from a wrecker company or operator from using his or her services; corrects cross-references.

Section 22: Effective January 1, 2008, repeals subsection (15) of s. 1.01, F.S., the definition of "wrecker operator."

Section 23: Provides for an appropriation of \$693,000 from the General Inspection Trust Fund to DACS and 9 additional FTE positions for the agency to implement the provisions of this act.

Section 24: Provides that the act shall take effect July 1, 2007, except where otherwise specified.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

##### **DACS**

	FY 07-08	FY 08-09	FY 09-10
Recurring GITF	693,000	693,000	693,000

Registration fee revenues are to be deposited in the General Inspection Trust Fund.

**Florida Department of Law Enforcement (FDLE)**

	FY 07-08	FY 08-09	FY 09-10
<u>Recurring</u>			
New applicant background checks estimated at 280 (20% turnover – 280 x \$23)		6,440	6,440
<u>Nonrecurring</u>			
Anticipated first year (1,400 background checks @ \$23)	32,200		

Revenues are to be deposited in the Operating Trust Fund.

2. Expenditures:

**DACS**

	FY 07-08	FY 08-09	FY 09-10
<u>Recurring GITF</u>			
Positions (10)	478,677	488,251	498,016
Expenses	67,462	68,962	68,962
AGMIC		6,200	6,200
Non-operating costs (including Gen. Rev. Svc. Chg.)	<u>100,451</u>	<u>100,451</u>	<u>100,451</u>
<b>Total Recurring</b>	646,590	663,864	673,629
<u>Nonrecurring GITF</u>			
Op. Capital Outlay	13,000		
Expenses	32,974		
<b>Total Non- Recurring Costs - GITF</b>	<u>45,974</u>		
<b>Grand Total of Costs (GITF)</b>	<u>692,564</u>	<u>663,864</u>	<u>673,629</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. It is unknown at this time how much revenue local governments derive from occupational license fees from wrecker companies. If some wrecker companies decide not to register with the state, or delay registration for a year or two, then they would not be able to obtain an occupational license from their city or county of operation.

2. Expenditures:

Indeterminate. Some local governments may enter into cooperative agreements with DACS to help enforce the wrecker regulations, but the cost of such responsibilities is unknown at this time.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee of \$495 and comply with the new certification requirements. It is unknown at this time how much the certification and continuing education requirements will cost industry members. According to one industry representative, voluntary wrecker education courses currently cost from \$75 to \$130. The wrecker industry also will incur the costs of fingerprinting and background checks to meet the new registration requirements. According to FDLE, each request is \$47, \$23 of which goes into the FDLE Operating Trust Fund. The remaining \$24 from each request is forwarded to the Federal Bureau of Investigation.

The general public also is likely to be financially impacted because some wrecker companies may increase towing fees and other charges to cover the new costs of regulation. In any event, the financial cost to consumers is indeterminate at this time, as are the benefits of increased safety and the improved sense of trust and security consumers may experience from having access to better educated and better regulated wrecker operators.

HB 93 also may promote an increase in the number of companies offering wrecker education courses with competitive tuition prices, since certification and continuing education will be a requirement for all tow truck operators working for registered wrecker companies.

### D. FISCAL COMMENTS:

HB 93 authorizes nine new positions in DACS, and appropriates \$693,000 from the General Inspection Trust Fund. It should be noted that DACS states ten positions are necessary to implement the wrecker regulation program at this same cost. Their analysis, however, illustrates that the \$495 registration fee will cover all FY 2007-08 expenditures by DACS, and these revenues should exceed projected expenditures in future years. If fewer than the estimated 1,400 Florida wrecker companies decide to register with DACS, expenditures would exceed revenues and this program would be operating on a deficit.

Additionally, HB 93 creates a number of misdemeanor and felony offenses. Felony offenses could require prison time so it is recommended that the Criminal Justice Estimating Conference review the bill for any potential prison bed impacts. However, if the Legislature fails to rank a felony offense on the offense severity ranking chart (which is the case here), the offense typically defaults to a level 1 which is normally presumed to carry a minimal impact on the prisons.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to HB 93 because the bill does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

#### 2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

In proposed s. 108.103, F.S., DACS is granted rulemaking authority to administer the chapter, including prescribing specific standards to further define each of the described specialized wrecker services; governing the issuance of certification cards to wrecker operators who meet specified requirements; and setting and adopting a fee schedule.

Included in the rewrite of s. 321.051, F.S., the DHSMV is directed to adopt rules prescribing procedures for setting rates for towing and storage of vehicles removed at the request of the FHP.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**2005 Legislation:**

A nearly identical bill (CS/SB 276) passed the 2005 Legislature. The legislation; however, was vetoed by Governor Bush. The veto message stated, in part:

“ . . .The bill places excessive regulatory and cost burdens on the entire wrecker industry, a burden that will be particularly difficult for smaller wrecker companies to bear. . . .The Department of Agriculture and Consumer Services will be required to provide regulation and enforcement of over 1,500 wrecker companies across the state. Although the bill authorizes 10 FTE positions and appropriates \$683,000. . . .it is not certain that those resources will sufficiently equip the department to carry out its new responsibilities.

. . . .the Sunrise Act(,) establishes criteria that must be met before initiating regulation of an industry group in Florida. Among them is the requirement to show that, left unregulated, current industry activities will endanger or substantially harm the public safety or welfare. While proponents of the bill have shown through newspaper articles and videos that problems do exist as the result of abuses by unscrupulous “gypsy” towers, there is insufficient evidence to meet the threshold of *substantial harm* as required by the Sunrise Act.”<sup>5</sup>

**FDLE Analysis:**

In its analysis of the bill, FDLE recommends adding the following language regarding criminal history record checks: *The Department of Agriculture and Consumer Services shall collect from each applicant the fingerprint processing fee of \$23 for state processing and an additional fee for national processing. The department shall screen background results to determine if applicant meets the requirements for issuance of a registration certificate.*

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 21, 2007, the Committee on Agribusiness adopted a strike-all amendment that:

- Creates a 5 member Wrecker Operator Advisory Council within the Department of Agriculture and Consumer Services;
- Provides that the Commissioner of Agriculture shall appoint the council and provides direction for making the appointments;
- Deletes the proposed operator certification and education/training programs and maintains the requirement for wrecker companies to register with the department; and
- Keeps the provisions related to the Department of Highway Safety and Motor Vehicles that were included in the original bill.

<sup>5</sup> Veto letter for CS/SB 276, June 3, 2005, Governor Jeb Bush.